

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CATHRINE R LEE,
Plaintiff,

v.

KILOLO KIJAKAZI,
Defendant.

Case No. 21-cv-03883-VKD

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

Re: Dkt. No. 32

Pending before the Court is defendant Commissioner of Social Security Kilolo Kijakazi's motion to dismiss plaintiff Cathrine R. Lee's complaint.¹ Dkt. No. 32. Ms. Lee has not responded to the motion. Pursuant to Civil Local Rule 7-1(b), the Court deemed this matter suitable for determination without oral argument. Dkt. No. 33. For the reasons discussed below, the Court grants the Commissioner's motion to dismiss.

In May of 2010, Ms. Lee applied for and was granted disability insurance benefits and supplemental security income benefits. *See* Dkt. No. 25, Robertson Decl. ¶ 3. On February 21, 2021, the Commissioner completed a continuing disability review ("CDR") of Ms. Lee's case. Dkt. No. 32 at 3. This review resulted in the agency terminating Ms. Lee's benefits. *Id.* On March 31, 2021, Ms. Lee filed a request for reconsideration of the CDR decision and an untimely request for continued benefits (to be received while her request for reconsideration was pending). *Id.* On May 24, 2021, Ms. Lee filed this action. Dkt. No. 1. She alleges that the Commissioner repeatedly failed to respond to her requests for reinstatement of her disability benefits while she

¹ All parties have consented to magistrate judge jurisdiction. Dkt. Nos. 7, 9.

sought reconsideration of the Commissioner's decision. *Id.* at 1.

On November 2, 2021, the Commissioner filed a first motion to dismiss Ms. Lee's complaint. Dkt. Nos. 19, 25. The Court liberally construed Ms. Lee's complaint as alleging (1) that the Commissioner unreasonably delayed action on her request to reconsider the cessation of her disability benefits, and (2) that Ms. Lee is entitled to continued benefits pending the Commissioner's decision on reconsideration. Dkt. No. 21 at 4. The Court dismissed, with leave to amend, Ms. Lee's claim that the Commissioner unreasonably delayed action on her request for reconsideration. *See id.* at 5-6. However, the Court denied the Commissioner's motion to dismiss Ms. Lee's claim that she is entitled to continuing benefits that the agency had not provided, citing insufficient evidentiary support for the Commissioner's representation that Ms. Lee was continuing to receive such benefits. *See id.* at 4-5. The Court gave Ms. Lee until June 24, 2022 to amend her unreasonable-delay claim. *Id.* at 7. Ms. Lee did not file an amended pleading.

The Commissioner has filed a second motion to dismiss Ms. Lee's continuing-benefits claim on the ground that the Court lacks subject matter jurisdiction over this claim. Dkt. No. 32 at 4. The Commissioner argues that Ms. Lee continued to receive all of the benefits to which she was entitled pending the Commissioner's decision on reconsideration and her claim is now moot. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) ("An actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.") (internal quotation marks and citation omitted).

A jurisdictional challenge may be facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Here, the commissioner makes a factual challenge to the Court's subject matter jurisdiction. In resolving a factual dispute as to the existence of subject matter jurisdiction, the Court may review extrinsic evidence beyond the complaint without converting a motion to dismiss into one for summary judgment. *Id.* Once the moving party has made a factual challenge by offering affidavits or other evidence to dispute the allegations in the complaint, the party opposing the motion must "present affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction." *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989); *see also Savage v. Glendale Union High Sch.*

1 *Dist. No. 205*, 343 F.3d 1036, 1040 n.2 (9th Cir. 2003).

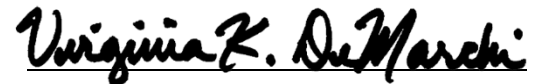
2 The Commissioner argues that the Court lacks subject matter jurisdiction over Ms. Lee's
3 complaint. Specifically, the Commissioner says that Ms. Lee has received all continuing benefits
4 to which she was entitled and her claim is now moot. Dkt. No. 32 at 4. In support of this factual
5 challenge to jurisdiction, the Commissioner relies on the declaration of a claims specialist
6 employed by the agency, who avers that the agency issued Ms. Lee two payments of \$4,614 and
7 \$1,714 on September 17, 2021 and October 1, 2021, representing a continuation of her
8 supplemental security income and disability insurance benefits retroactive to the month when her
9 benefits had ceased. Dkt. No. 32-1, Gilliam-Banks Decl. ¶¶ 8-9. The claims specialist further
10 attests that Ms. Lee continued to receive benefits in a total amount of \$956.19 per month each
11 month since then until her request for reconsideration was finally denied on September 15, 2022.
12 *Id.* ¶ 10-11; *see also* Dkt. No. 32-1 at 10-18. As noted, Ms. Lee has not responded to the
13 Commissioner's motion to dismiss and does not contest the facts asserted in the declaration.

14 In light of the above, the Court finds that Ms. Lee's claim is moot because she has received
15 all requested relief. Accordingly, the Commissioner's motion to dismiss for lack of subject matter
16 jurisdiction is granted. *See Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 797-98 (9th Cir.
17 1999).

18 The Clerk of the Court shall close the file.

19 **IT IS SO ORDERED.**

20 Dated: December 5, 2022

21
22 
23 VIRGINIA K. DEMARCHI
24 United States Magistrate Judge
25
26
27
28